



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/534,711	03/24/2000	Philip O Livingston	53437-A-PCT-US/JPW/JL	2601

7590

04/22/2002

John P White  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, NY 10036

EXAMINER

BANSAL, GEETHA P

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 04/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/534711

Applicant(s)

Livingston et al

Examiner

Evelyn Bancel

Group Art Unit

1642

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 1/29/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-2, 5-8, 11-16 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-2, 5-8, 11-16 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). # 5 (5 sheets)
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 1642

### DETAILED ACTION

1. Applicant's amendment filed 1/29/02 (Paper No:5/B) are acknowledged. Accordingly, claims 1, 5-7, 11-12, 14, 16 are amended and claims 3-4, 9-10 are canceled without prejudice.

Claims 1-2, 5-8, 11-16 are being examined.

### *Response to Arguments*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The rejection of claims 12 under 35 U.S.C. 112, 1st paragraph is withdrawn in view of the arguments as well as the amendment to recite "small cell lung cancer", which the reference of Jennemann et al has shown to be enabled.

1-2, 5-8, 11-16 *Reissue*  
4. The rejection of claims ~~12~~ under 35 U.S.C. 103(a) is maintained. Applicant's arguments and amendments have been considered but they are not persuasive. Applicant argues that claims have been amended to recite small cell lung cancer. However, Applicant's amendment is not persuasive to withdraw the rejection. Jennemann et al teaches the administration of a fucosylated GM1 ganglioside conjugated to KLH, and also teach that the administration of similar antigens with QS-21 was able to induce an immune response in humans in the treatment of melanomas- page 383 of Jennemann (It appears that the last office action was a little confusing with respect to Jennemann et al and adjuvants such as Quilla or QS21- the action meant to have conveyed that Jennemann does not teach QS21 or Quill A in conjunction with Fucosylated GM1). The references of Vangsted and Kensil provide the motivation and reasonable expectation of success of using a fucosylated GM1 conjugated to a carrier, and administered to a subject for preventing or treating small cell lung cancer.

Art Unit: 1642

5. No claims are allowed.

6. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Papers related to this application may be submitted to Group 1640 by facsimile transmission. Papers should be faxed to Group 1640 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 308-4242 or (703) 305-3014.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Geetha P. Bansal whose telephone number is (703) 305-3955. The examiner can normally be reached on Mondays to Fridays, and alternate Wednesdays from 7:00am to 4:30pm and alternate Fridays from 7:00am to 3:30pm. A message may be left on the examiner's voice mail service.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Anthony Caputa, can be reached on (703) 308- 3995.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

April 16, 2002



GEETHA P. BANSAL  
PRIMARY EXAMINER